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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.:

99-M-1386

THE UNITED STATES OF AMERICA
and THE STATE OF COLORADO,

Plaintiffs,

v.

RICO DEVELOPMENT CORPORATION;
WAYNE WEBSTER, and
VIRGINIA SELL,

Defendants.

RECEIVED

AUG-19-1999

DEC 13, 1999

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (U.S. EPA); and the State of Colorado, by and through the Attorney General of the State of Colorado on behalf of the Colorado Department of Public Health and Environment (CDPHE) (collectively "the State"), allege as follows:

INTRODUCTION

1. This is a civil action for injunctive relief and civil penalties pursuant to Sections 309(b) and (d) of the federal Clean Water Act ("CWA" or the "Act"), 33 U.S.C. §§ 1319(b) and (d), and Sections 25-8-607 and -608, C.R.S. (1998) of the Colorado Water Quality Control Act ("CWQCA" or the "State Act"), against Rico Development Corporation (RDC), a 1996 dissolved Colorado corporation, Wayne Webster, and Virginia Sell. The Plaintiffs seek civil penalties against each of the

Defendants arising out of the unlawful discharge of pollutants and the failure to monitor and report the discharge of pollutants during the five years prior to filing of this Complaint, in violation of Sections 301(a), 308(a) and 402(a) of the CWA, 33 U.S.C. §§ 1311(a), 1318(a) and 1342(a), and in violation of the CWQCA, Sections 25-8-501(1) and 304(1), C.R.S., and Colorado Discharge Permit System Regulation No. 61.8, 5 CCR 1002-61, and permanent injunctive relief to remedy the violations.

2. The claims arise from the Defendants' failure to comply with the National Pollutant Discharge Elimination System, Section 402 of the CWA, 33 U.S.C. § 1342, through a Colorado Discharge Permit System permit issued under Section 25-8-501 to 503, C.R.S.; discharge of pollutants without a permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and Section 25-8-501(1), C.R.S.; and failure to monitor and report the discharge of pollutants, in violation of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), and Section 25-8-304(1), C.R.S., at property owned and/or operated by the Defendants known as the Blaine Tunnel and the St. Louis Tunnel, both located north of Rico, Colorado.

3. Defendants Wayne Webster and Virginia Sell (the "Individual Defendants") are named both i) individually as former directors/officers/shareholders of RDC and who directly and indirectly, operated, directed, managed, controlled, or conducted the affairs of RDC and of the facilities releasing pollutants into the environment; and ii) in the alternative, in their capacity as shareholders of RDC, as persons who are entitled to receive and who may have received distributions from the dissolution of RDC.

JURISDICTION, VENUE, AND NOTICE

4. This Court has original jurisdiction over the federal claims pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental

jurisdiction over the corresponding State claims pursuant to 28 U.S.C. § 1367. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b), (c), and 1395(a), because the violations alleged herein occurred in Colorado.

5. Notice of the commencement of this action has been given to the State of Colorado in accordance with Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANTS

6. From 1988 To 1996, Defendant RDC was a corporation organized and existing under the laws of the State of Colorado and doing business in the State of Colorado. On November 1, 1996, RDC was administratively dissolved by the Colorado Secretary of State for failure to file its biennial corporate reports.

7. Pursuant to Section 7-114-203, C.R.S., Defendant RDC, as an administratively dissolved corporation, was required to apply for reinstatement within two years of the date of dissolution to continue its corporate existence. Because more than two years have passed since the date of dissolution, RDC cannot be reinstated.

8. RDC is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and Section 25-8-103(13), C.R.S.

9. Each of the Individual Defendants is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and Section 25-8-103(13), C.R.S.

CLEAN WATER ACT STATUTORY AND REGULATORY BACKGROUND

10. Section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of pollutants" by any person into navigable waters of the United States except in compliance with that Section, and,

⑥

THIS IS CORRECT.

where applicable, a National Pollution Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

11. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that the Administrator of U.S. EPA may authorize a state to administer the NPDES permitting program within its jurisdiction. The Administrator of U.S. EPA authorized the State of Colorado to administer the NPDES program on April 14, 1975, and Colorado's authority to administer the program has been in full force and effect at all times relevant to this Complaint. Pursuant to that program, Colorado issues "Colorado Discharge Permit System" (CDPS) permits which are State-issued NPDES permits under the CWA. The State Act provides that "[n]o person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the [State] for such discharge" § 25-8-501(1), C.R.S.

12. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the permit-issuing authority may issue a NPDES permit which authorizes the discharge of pollutants directly into navigable waters of the United States, but only in compliance with the applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, and such other conditions as the Administrator determines are necessary to carry out the provisions of the CWA.

13. Section 308(a)(4)(A) of the Act, 33 U.S.C. § 1318(a)(4)(A), provides that whenever required to carry out the objectives of the Act, including determining whether any person is in violation of any effluent limitation, U.S. EPA has the authority to require the permittee, as part of its permit, to: "(i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment or methods (including where appropriate biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such information as he may reasonably

require ..." The State Act contains corresponding monitoring and reporting requirements at Section 25-8-304(1), C.R.S.

14. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, inter alia, Section 301 of the CWA, 33 U.S.C. § 1311, or violates any effluent limit or any condition in a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The State Act authorizes injunctive relief at Section 25-8-607, C.R.S.

15. Pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), the U.S. EPA retains separate enforcement authorities for violations of the Clean Water Act, including violations of a permit issued by a State.

16. Section 309(d) of the Act, 33 U.S.C. 1319(d), provides that any person who violates Sections 301 and 308 of the Act, 33 U.S.C. §§ 1311 and 1318, or violates any effluent limit or condition in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. Section 25-8-608(1) of the CWQCA provides that the corresponding State violations shall be subject to civil penalties not to exceed \$10,000 per day for each day during which the violation occurred.

17. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701-3730, and U.S. EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the statutory maximum penalty for CWA Section 309 violations, (See 42 U.S.C. § 1319(d)), has been raised from \$25,000 to \$27,500 per day, per violation. See 40 C.F.R. § 19.4 (Table 1). The new rate is effective for any violations occurring after January 30, 1997. See 40 C.F.R. § 19.2. The \$25,000 per day per violation rate continues to apply for violations occurring on or before January 30, 1997.

FACTUAL BACKGROUND - GENERAL ALLEGATIONS

18. This case concerns the St. Louis and Blaine Tunnels which are part of a complex of inactive tunnels known as the Rico Argentine Mine (the "Mine") located in the San Juan Mountains in Dolores County, Colorado. The Mine is located one mile north of the Town of Rico, Colorado along the Dolores River.

19. The State of Colorado issued Colorado Discharge Permit System Permit No. CO-0029733 (the "Permit") to Anaconda Minerals Company (Anaconda), the former owner and operator of the St. Louis and Blaine Tunnels and the Water Treatment System (the "WTS") located adjacent to the St. Louis Tunnel. The Permit became effective on June 13, 1988. The Permit required Anaconda to operate the WTS and established, among other things, certain effluent limitations and monitoring requirements.

ATLANTIC
RIDGE #60

20. In June 1988, RDC purchased from ~~Anaconda~~ certain properties including the St. Louis and Blaine Tunnels, and the WTS. At that time, RDC became owner and operator of the St. Louis and Blaine Tunnels and the WTS.

21. On or about September 7, 1988, the Permit was transferred from Anaconda to RDC. In 1993, RDC sought renewal of the Permit. On December 30, 1993, CDPHE authorized RDC's Permit renewal, which became effective February 1, 1994. The renewed Permit expired on January 31, 1999. A true and accurate copy of the renewed Permit is attached as Exhibit 1 and incorporated herein by reference.

22. The Mine has two outfalls which discharge pollutants into the Dolores River and into Silver Creek, a tributary to the Dolores River. The Dolores River and Silver Creek are each a "navigable water" of the United States within the meaning of the CWA, 33 U.S.C. § 1362(7), "waters of the

United States" within the meaning of 40 C.F.R. § 122.2, and "state waters" pursuant to Section 25-8-103(19), C.R.S. The State has classified the Dolores River as Class 2 recreation use, Class 1 cold water aquatic life use as well as for domestic and agricultural uses. These outfalls are known as Outfall 001 (Blaine Tunnel) and Outfall 002 (St. Louis Tunnel).

23. The Mine discharges wastewater ("Wastewater") into waters of the United States containing pollutants, including, but not limited to: silver, lead, cadmium, zinc, copper, Total Suspended Solids (TSS) and pH. The Wastewaters are pollutants or contain pollutants as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and Section 25-8-103(15), C.R.S..

HAS BEEN FOR 100 YRS
(24) Outfall 001, the Blaine Tunnel, was eliminated as a discharge point from the Permit in 1990 when RDC installed a concrete barrier intended to direct flow from the Blaine Tunnel through underground mine workings where it then combines with the Wastewater in the St. Louis Tunnel. Despite RDC's efforts, Wastewater still discharges from Outfall 001. At all times relevant to this Complaint, Outfall 001 has not been listed as an authorized discharge point in RDC's Permit.

25. Wastewater from the St. Louis Tunnel passes through a lime addition system and approximately 11 settling ponds that operate as the WTS. The Wastewater then discharges into the Dolores River at Outfall 002. Wastewaters exiting Outfall 002 were authorized by the Permit as long as certain pollutants, as measured at Outfall 002, did not exceed the effluent limits established in the Permit.

26. Pursuant to the Permit, 40 C.F.R. § 122.41(l), and CDPS Regulation No. 61.8(4)(d), RDC was required to periodically monitor and report pollutant concentrations and the discharge quantity at Outfall 002 on Discharge Monitoring Reports (DMRs) in order to demonstrate compliance

JUNE 1989
SOLD. 1991
NOV. 1994
R 1999

with the Permit. In addition, RDC was required to certify the accuracy of its Wastewater data on each DMR.

NO TOOK TUNNEL & PLANT ANYWAY
(27) On or about November 14, 1994, RDC sold nearly all of its holdings in the Rico area to an unrelated corporation, Rico Properties, LLC ("RP"). On information and belief, as part of the negotiations, RDC and RP agreed that RP was not interested in and would not be purchasing those portions of the Mine presenting environmental liabilities. These properties included the St. Louis Tunnel and the WTS.

NO
(28) On information and belief, despite RDC's and RP's agreement, the purchase documents and deeds mistakenly included, and thereby transferred, ownership of the St. Louis Tunnel and the WTS to RP.

NO
(29) Over a year after the sale to RP, sometime during the middle of 1996, RDC apparently recognized that it had in fact transferred the St. Louis Tunnel and the WTS properties to RP. In response, on or about September 1, 1996, RDC simply abandoned the Mine and discontinued operation of the WTS. On September 4, 1996, RDC notified CDPHE that RDC no longer owned the St. Louis Tunnel and the WTS. Thereafter, in CDPHE correspondence with RP, RP denied having ownership of the properties.

30. On November 1, 1996, RDC was administratively dissolved by the Colorado Secretary of State due to one or more of the Individual Defendants' failure to file with the State the necessary corporate reports on behalf of RDC as required by Section 7-114-202, C.R.S.

NO - NOT VALID - NOT TO ME - SEE DAVE
(31) On information and belief, RP contacted RDC regarding the discrepancy concerning the sale documents and RP, on or about February 21, 1997, executed a "Correction Warranty Deed" to

(27) TOOK TUNNEL & LIME PLANT

R.P. RENTED OUT LIME PLANT
& REST OF PROPERTY TO STATE
SEE DAVE SELL

(28) NO AGREEMENT. NO

MISTAKES WERE MADE
DAVE SELL HAS COPIES

OF SALE.

(29) AT THE SALE DATE, R.P.

HAD THE OPTION TO EXCLUDE
PROPERTIES NOT WANTED
SEE DAVE SELL.

(30) NOT TO MY KNOWLEDGE

SEE DAVE SELL.

1210
properly reflect the purchase agreement between RDC and RP and to transfer back the St. Louis Tunnel and the WTS to RDC.

32. RDC's final biennial report, filed in 1994, lists Defendant Wayne Webster as a director and the president of RDC and Defendant Virginia Sell as a director and the secretary of RDC.

33. The Individual Defendants, as former directors/officers/shareholders of RDC, also directly and indirectly operated, directed, managed, controlled, or conducted the affairs of RDC and of the St. Louis Tunnel, the Blaine Tunnel, and the WTS.

34. Each of the Individual Defendants are "owners and operators" of the St. Louis and Blaine Tunnels, and the WTS within the meaning of 40 C.F.R. Part 122.2.

35. Because the Individual Defendants caused RDC to improperly and fraudulently abandon the St. Louis and Blaine Tunnels and the WTS, left RDC without sufficient capital to continue operations at the Site in order to prevent environmental pollution, and disregarded the corporate form of RDC, the corporate entity of RDC should be disregarded and each of the Individual Defendants held liable for RDC's actions.

FIRST CLAIM FOR RELIEF
(Effluent Limit Violations)

36. Paragraphs 1-35 are realleged and incorporated herein by reference.

37. The Permit set limits on the amount of pollutants that may be discharged from Outfall 002 into the Dolores River including, but not limited to, total recoverable silver, total recoverable lead, total recoverable cadmium, total recoverable zinc, total recoverable copper, TSS and pH.

38. As summarized on Table 1 to this Complaint, which is incorporated herein by reference, the Defendants repeatedly exceeded the effluent limits set for Outfall 002 in the Permit. The Defendants

reported these violations (or exceedances) in DMRs submitted to CDPHE and to U.S. EPA on a monthly basis from June 1994 to September 1996.

39. On or about September 1996, the Defendants abandoned the WTS. From October 1996 through January 1999, untreated Wastewater continued to discharge from Outfall 002 in violation of effluent limits in the Permit.

40. Each day of discharge of each pollutant in excess of limitations contained in the Permit is a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and CDPS Regulation No. 61.8. Each discharge of each pollutant in excess of a monthly average limitation in the Permit is a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and CDPS Regulation No. 61.8 for each day of that month.

41. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), RDC is liable for injunctive relief and for civil penalties not to exceed \$25,000 for each day of each violation occurring before January 30, 1997, and \$27,500 for each day of each such violation occurring after January 30, 1997. Pursuant to Sections 25-8-607(1) and -608(1) of the CWQCA, RDC is liable for injunctive relief and civil penalties not to exceed \$10,000 per day for each day during which the violation occurred.

42. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), the Individual Defendants are each liable for injunctive relief and for civil penalties not to exceed \$25,000 for each day of each violation occurring between on or about September 1, 1996, until January 30, 1997, and \$27,500 for each day of each such violation occurring after January 30, 1997. Pursuant to Sections 25-8-607(1) and -608(1) of the CWQCA, the Individual Defendants are each liable for

injunctive relief and civil penalties not to exceed \$10,000 per day for each day during which the violation occurred.

SECOND CLAIM FOR RELIEF
(Unauthorized Discharges from Outfall 002)

43. Paragraphs 1-35 are realleged and incorporated herein by reference.

44. On January 31, 1999, the Permit expired by its own terms. None of the Defendants requested an extension or reissuance of the Permit pursuant to 40 C.F.R. § 122.6, nor did they request a Permit renewal pursuant to CDPS Regulation No. 61.10.

45. Since February 1, 1999, Wastewater discharges from Outfall 002 have continued without an NPDES or CDPS permit. Each day of discharge of Wastewater from Outfall 002 without a permit since February 1, 1999 is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and of Section 25-8-501, C.R.S..

46. The Defendants' unpermitted discharge violations at Outfall 002 are ongoing and will continue unless restrained by order of this Court.

47. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), each of the Defendants is liable for injunctive relief and civil penalties not to exceed \$27,500 for each day of each such violation occurring after January 31, 1999. Pursuant to Sections 25-8-607(1) and -608(1) of the CWQCA, each of the Defendants is liable for injunctive relief and civil penalties not to exceed \$10,000 per day for each day during which the violation occurred.

THIRD CLAIM FOR RELIEF
(Unauthorized Discharges from Outfall 001)

48. Paragraphs 1-35 are realleged and incorporated herein by reference.

49. Since 1990, Wastewater discharges from Outfall 001 have not been permitted by U.S. EPA or CDPHE.

50. Each day of discharge of Wastewater from Outfall 001 within the past five years is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and Section 25-8-501(1), C.R.S.

51. The Defendants' unpermitted discharge violations at Outfall 001 are ongoing and will continue unless restrained by order of this Court.

52. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), RDC is liable for injunctive relief and for civil penalties not to exceed \$25,000 for each day of each violation occurring before January 30, 1997, and \$27,500 for each day of each such violation occurring after January 30, 1997. Pursuant to Sections 25-8-607(1) and 608(1) of the CWQCA, RDC is liable for injunctive relief and civil penalties not to exceed \$10,000 per day for each violation.

53. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), the Individual Defendants are each liable for injunctive relief and for civil penalties not to exceed \$25,000 for each day of each violation occurring between on or about September 1, 1996, until January 30, 1997, and \$27,500 for each day of each such violation occurring after January 30, 1997. Pursuant to Sections 25-8-607(1) and -608(1) of the CWQCA, the Individual Defendants are each liable for injunctive relief and civil penalties not to exceed \$10,000 per day for each day during which the violation occurred.

FOURTH CLAIM FOR RELIEF
(Failure to Monitor and Report)

54. Paragraphs 1-35 are realleged and incorporated herein by reference.

55. Pursuant to the Permit, 40 C.F.R. § 122.41, and CDPS Regulation No. 61.8(4)(d), RDC and, at various times, the Individual Defendants, were required to monitor and report to CDPHE and to U.S. EPA the Wastewater discharge from Outfall 002. The Permit provided for weekly monitoring of all effluent parameters and daily monitoring of flow.

56. Pursuant to these monitoring and reporting requirements, the Defendants submitted to CDPHE monthly DMRs and analytical data regarding the levels of pollutants in the Wastewater at Outfall 002 from July 1994 until September 1996.

57. During the period referred to in the previous paragraph, the Defendants failed to report all the required monitoring data and failed to sample at the correct frequency. Each of these failures is a violation of the Permit, Section 308(a)(4)(A) of the CWA, 33 U.S.C. § 1318(a)(4)(A), Section 25-8-304(1), C.R.S., 40 C.F.R. § 122.41, and CDPS Regulation No. 61.8(4)(d). Each of these violations is summarized in Table 2 to this Complaint, which is attached and incorporated herein by reference.

58. From October 1996 through January 31, 1999 RDC completely failed to monitor and report the Wastewater discharges as required by the Permit in violation of the Permit, Section 308(a)(4)(A) of the CWA, 33 U.S.C. § 1318(a)(4)(A), Section 25-8-304(1) C.R.S., 40 C.F.R. § 122.41, and CDPS Regulation No. 61.8 (4)(d).

59. From approximately September 1, 1996, through January 31, 1999, the Individual Defendants completely failed to monitor and report the Wastewater discharges as required by the Permit in violation of the Permit, Section 308(a)(4)(A) of the CWA, 33 U.S.C. § 1318(a)(4)(A), Section 25-8-304(1) C.R.S., 40 C.F.R. § 122.41, and CDPS Regulation No. 61.8 (4)(d).

60. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), RDC is liable for injunctive relief and civil penalties not to exceed \$25,000 for each day of each such violation occurring before January 30, 1997, and \$27,500 for each day of each such violation occurring after January 30, 1997. Pursuant to Sections 25-8-607(1) and -608(1) of the CWQCA, RDC is liable for injunctive relief and civil penalties not to exceed \$10,000 per day for each day during which the violation occurred.

61. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), the Individual Defendants are each liable for injunctive relief and for civil penalties not to exceed \$25,000 for each day of each violation occurring between on or about September 1, 1996, until January 30, 1997, and \$27,500 for each day of each such violation occurring after January 30, 1997. Pursuant to Sections 25-8-607(1) and -608(1) of the CWQCA, the Individual Defendants are each liable for injunctive relief and civil penalties not to exceed \$10,000 per day for each day during which the violation occurred.

FIFTH CLAIM FOR RELIEF
(Distributed Corporate Assets)

62. Paragraphs 1-61 are realleged and incorporated herein by reference.

63. As an alternative ground for relief against the Individual Defendants, the Plaintiffs allege as follows.

64. Pursuant to Section 7-114-203, C.R.S., Defendant RDC, as an administratively dissolved corporation, was required to apply for reinstatement within two years of the date of dissolution to continue its corporate existence. Because more than two years have passed since the date of dissolution, RDC cannot be reinstated.

65. Pursuant to Section 7-114-105, C.R.S., a dissolved corporation is still subject to suit.

66. Pursuant to section 7-114-108, C.R.S., a claim against a dissolved corporation may be enforced against the dissolved corporation to the extent of its undistributed assets, and against the shareholders of the dissolved corporation to the extent of assets distributed to them in the course of liquidation.

67. On information and belief, the Individual Defendants, as shareholders of RDC, were entitled to receive and may have received distributions from the dissolution of RDC.

68. Each of the Individual Defendants is liable, to the extent of their distributed assets from the dissolution of RDC, for the penalties and injunctive relief for which RDC is liable.

RELIEF SOUGHT

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment on behalf of the Plaintiffs and against the Defendants as follows:

1. Order each of the Defendants, pursuant to Section 309(b) of the Act, 33 U.S.C. §1319(b), and Section 25-8-607(1), C.R.S., to achieve permanent and consistent compliance with the Clean Water Act at the St. Louis Tunnel and the WTS, including full compliance with the terms and conditions of the Permit until a new permit is issued, and require Defendants to apply for and obtain a new permit pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and Sections 25-8-501 to -503, C.R.S.
2. Order each of the Defendants, pursuant to Section 309(b) of the Act, 33 U.S.C. §1319(b), and Section 25-8-607(1), C.R.S., to eliminate unauthorized discharges of untreated mine Wastewater from the Blaine Tunnel and the St. Louis Tunnel;
3. Assess a civil penalty against each of the Defendants not to exceed \$25,000 for each day of each violation of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318 and 1342, up to

and including January 30, 1997, and \$27,500 for each day of each violation occurring thereafter, as alleged in this complaint; and assess a civil penalty against each of the Defendants not to exceed \$10,000 per day for each day during which the violation of Sections 25-8-501(1) and -304(1), C.R.S., and CDPS Regulation No. 61.8 occurred;

4. Order the Individual Defendants to pay the civil penalty assessed against Defendant RDC, and to perform any injunctive relief ordered by this Court against RDC, up to the amount of each Individual Defendants' distributions from Defendant RDC;

5. Award the Plaintiffs all costs in this action; and

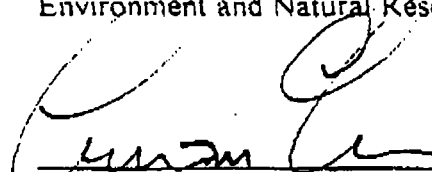
6. Grant such other relief as it may deem just and proper.

Respectfully submitted,

FOR THE UNITED STATES:

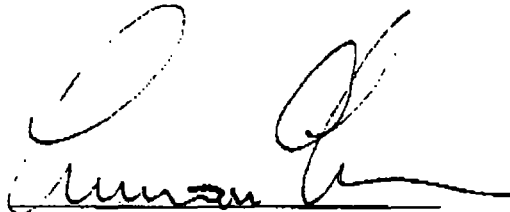
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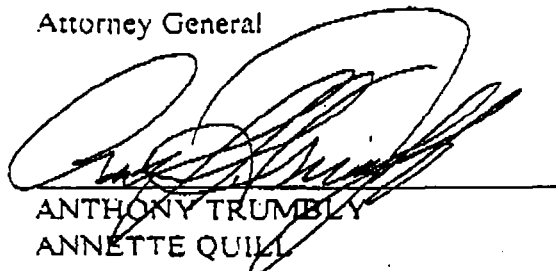
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